

JUDGE KARAS

'08 CIV 6951.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ELLIOT PORCO,

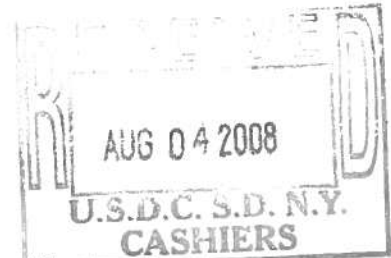
Plaintiff,

Case No. _____

- v -

LEXINGTON INSURANCE COMPANY.

Defendant.
----- X



NOTICE OF PETITION FOR REMOVAL

PLEASE TAKE NOTICE that Defendant LEXINGTON INSURANCE COMPANY (“Defendant”) hereby removes this action pursuant to 28 U.S.C. §1332, 1441, and 1446 from the Supreme Court of the State of New York, County of Westchester, to the United States District Court for the Southern District of New York. This action is styled *Elliot Porco v. Lexington Insurance Company*, Index No. 14961/2008 (the “State Court Action”). The grounds for removal are as follows:

1. On or about June 30, 2008, Plaintiff Elliot Porco (“Plaintiff”) commenced this civil action against Defendant in the Supreme Court of the State of New York, Westchester County, by filing a Summons and Complaint. True and correct copies of the summons and complaint are attached as **Exhibit “A”** in accordance with 28 U.S.C. §1446(a)
2. Plaintiff served the Defendant with the Summons and Complaint via the State of New York Insurance Department on July 14, 2008. Thus, this Notice of removal is being timely filed pursuant to 28 U.S.C. §1446(b) because it is filed within 30 days of service.
3. Plaintiff is a citizen of New York, with a residence in New York.
4. Plaintiff has alleged and demanded damages in the amount of \$237,146.00.

5. Defendant is a Delaware corporation, with its principal place of business in Massachusetts.

6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1332 because this is a civil action in which the amount in controversy exceeds the sum of \$75,000.00, exclusive of costs and interests, and is between the citizens of different states.

7. Venue is proper in this Court pursuant to 28 U.S.C. §112(b) because it is the district and division embracing the place where such action is pending in accordance with 28 U.S.C. §1441(a).

8. No previous application has been made for the relief requested herein.

9. Pursuant to 28 U.S.C. §1446(d), a copy of this Notice of Removal is being served upon counsel for the Plaintiff, and a copy is also being filed with the Clerk of the New York Supreme Court, Westchester County. The Notice of Filing Notice of Removal is attached as **Exhibit "B"**.

WHEREFORE, the Defendant Underwriters respectfully requests that this action be removed from the Supreme Court of the State of New York, Westchester County to the United States District Court for the Southern District of New York, and that this Court assume jurisdiction of this action and make such further orders as may be required to properly determine this controversy.

Dated: August 4, 2008

Respectfully submitted,

CLAUSEN MILLER P.C.

By:



Jacob R. Zissu (JZ1999)
Attorneys for Defendants

LEXINGTON INSURANCE COMPANY
One Chase Manhattan Plaza
New York, New York 10005
(212) 805-3943

INSURANCE DEPARTMENT
One Commerce Plaza
Albany, NY 12257

JUL 11 2008

LEGAL DEPARTMENT

STATE OF NEW YORK
Supreme Court, County of Westchester

ELLIOT PORCO

14961/08

against

Plaintiff(s)

Lexington Insurance Company

Defendant(s)

RE : Lexington Insurance Company

Attorney for Plaintiff(s) and Defendant please take notice as follows:

Sirs :

Attorney for Plaintiff(s) is hereby advised of acknowledgement of service upon me of Summons and Complaint in the above entitled action on July 10, 2008 at New York, New York. The \$40 fee is also acknowledged. Pursuant to section 1213 of the Insurance Law, said process is being forwarded to Defendant at its last known principal place of business. Defendant is not authorized to do business in this state and you are advised that, while such service is accepted and being forwarded to the company, it is your duty to determine whether this is a proper service under section 1213 of the Insurance Law.

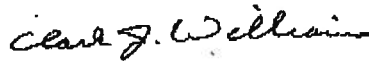
Original to Attorney for Plaintiff(s) :

Abraham, Lerner & Arnold, LLP
Attorneys at Law
292 Madison Avenue, 22nd Floor
New York, New York 10017

Pursuant to the requirement of section 1213 of the Insurance Law, Defendant is hereby notified of service as effected above. A copy of the paper is enclosed.

Duplicate to Defendant :

Legal Department
Lexington Insurance Company
200 Summer Street
Boston, Massachusetts 02110



by Clark J. Williams
Special Deputy Superintendent

Dated Albany, New York, July 14, 2008
Defendant letter was certified at the Albany Post Office on Tuesday,
July 15, 2008 at 1 :30 P.M. by Lewis Merritt
434781 C.A.#192228

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

Index No.: 14961/08
Date purchased: 7/7/08

-----X
ELLIOT PORCO,

Plaintiffs,

Plaintiff(s) designate(s)
WESTCHESTER
County as the place of trial

-against-

LEXINGTON INSURANCE COMPANY,

Defendant.
-----X

SUMMONS

Plaintiff(s) Reside(s) at:
120 Vernon Drive
Scarsdale, New York 10583
County of Westchester

The basis of venue designated
is: Plaintiff's Residence

To the above named Defendant(s):

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated, the 30th day of June, 2008

ABRAHAM, LERNER & ARNOLD, LLP
Attorneys for Plaintiff

By 

Johnathan C. Lerner
292 Madison Avenue, 22nd Floor
New York, New York 10017
212-686-4655

Defendant's Address:

Lexington Insurance Co. 200 Summer Street, Boston, Massachusetts 02110, c/o
Superintendent of Insurance

ABRAHAM, LERNER
& ARNOLD, LLP
ATTORNEYS AT LAW
10150 AVENUE, 22ND FLOOR
NEW YORK, NEW YORK 10017

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
ELLIOT PORCO,

Plaintiff,

-against-

LEXINGTON INSURANCE COMPANY,

Defendant.
-----X

Index No.: 14961/08

COMPLAINT

RECEIVED
JUL - 7 2008
CLERK OF COURT
JUL 10 2008

The Plaintiff, ELLIOT PORCO, by his attorneys, ABRAHAM, LERNER & ARNOLD, LLP, as and for his Complaint, alleges upon information and belief as follows:

1. At all times hereinafter mentioned, plaintiff ELLIOT PORCO ("plaintiff") was and still is an individual over the age of eighteen, and a resident and citizen of the State of New York

2. At all times hereinafter mentioned, defendant LEXINGTON INSURANCE COMPANY. ("defendant") was and still is a foreign corporation, organized and existing under and by virtue of the laws of the State of Massachusetts, with its principal place of business located in the State of Massachusetts.

3. At all times hereinafter mentioned, defendant was authorized by the Superintendent of Insurance to issue policies of insurance in the State of New York, including the policy issued to plaintiff herein.

4. At all times hereinafter mentioned, defendant was an unadmitted carrier, not authorized by the Superintendent of Insurance to issue policies of insurance in the State of New York.

5. At all times hereinafter mentioned, plaintiff was the title owner of the premises located at 120 Vernon Drive, Scarsdale, New York (hereinafter referred to as "the subject premises").

6. At all times hereinafter mentioned, plaintiff maintained an insurable interest in the subject premises.

7. Prior to June 2, 2007, for good and valuable consideration, defendant issued to plaintiff a policy of insurance bearing number LE 7887130 01, with effective dates of coverage from June 4, 2006 through June 4, 2007, which policy insured the subject premises, including the swimming pool located at the subject premises, against all risks of loss.

8. On or about June 2, 2007, while the aforementioned policy was in full force and effect, the swimming pool located at subject premises was damaged by a covered peril.

9. Subsequent to June 2, 2007, plaintiff submitted a claim to defendant seeking to be indemnified for the damages sustained to the swimming pool at the subject premises.

10. Defendant has failed to indemnify plaintiff for the damages sustained to the swimming pool at the subject premises, despite the fact that same has been duly demanded.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER**

ELLIOT PORCO,

Plaintiff,

-against-

LEXINGTON INSURANCE COMPANY,

Defendant.

SUMMONS and COMPLAINT

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney duly admitted to practice law in the State of New York, certifies that, upon information and belief based upon reasonable inquiry, the contentions contained in the annexed document are not frivolous.

Dated: July 2, 2008

Signature: 

Print Signer's Name: Jonathan C. Lerner

Service of a copy of the within

1 is hereby admitted.

Dated:

.....
Attorney(s) for

ABRAHAM LERNER & ARNOLD, LLP

Attorneys for Plaintiff

292 Madison Avenue, 22nd Floor

New York, New York 10017

(212) 686-4665

Exhibit B

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER**

----- X
ELLIOT PORCO,

Plaintiff,

Index No. 14961/2008

- v -

LEXINGTON INSURANCE COMPANY.

Defendant.

**NOTICE OF FILING
PETITION FOR
REMOVAL**

----- X

TO THE CLERK OF COURT:

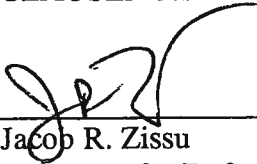
PLEASE TAKE NOTICE that the above captioned action has been removed to the United States District Court for the Southern District of New York. A copy of the Petition for Removal, filed with the United States District Court on August 4, 2008, is attached hereto for filing with this Court.

PLEASE TAKE FURTHER notice that pursuant to 28 U.S.C. § 1446(d), the filing of the Petition for Removal with the District Court effects the removal of this action, and this Court shall proceed no further unless and until this action is remanded.

Dated: New York, New York
August 4, 2008

Respectfully submitted,
CLAUSEN MILLER P.C.

By:



Jacob R. Zissu
Attorneys for Defendants
LEXINGTON INSURANCE COMPANY
One Chase Manhattan Plaza
New York, New York 10005
(212) 805-3943

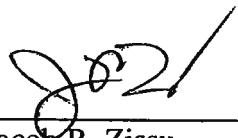
To:
Jonathan C. Lerner
ABRAHAM, LERNER, & ARNOLD, LLP
292 Madison Avenue, 22nd Floor
New York, New York 10017

(212) 686-4655

CERTIFICATE OF SERVICE

I certify under penalty of perjury that on the 4th day of August, 2008, I caused a true and correct copy of the foregoing NOTICE OF REMOVAL to be served by U.S. mail, postage prepaid, on the following:

Jonathan C. Lerner
ABRAHAM, LERNER, & ARNOLD, LLP
292 Madison Avenue, 22nd Floor
New York, New York 10017
(212) 686-4655



Jacob R. Zissu